

Serial No. 10/749,593

Atty. Docket No. Mo 5346D2/LeA 32 314D2

REMARKS

Applicants respectfully request reconsideration and reexamination of the present application in light of the amendments and the remarks below.

Claims 3-7, 12, and 13 are pending in this application.

Specification

The Examiner stated that the disclosure is objected to because the priority data, the application 10/227, 310 abandoned on July 27, 2004, is inconsistent with the PTO record (Paper No. 20060329, page 2). The specification has been amended to incorporate the priority data.

The Examiner stated that the oath or declaration is defective because the continuing data are not present. The Examiner stated that a new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required (Paper No. 20060329, page 2).

Under 37 CFR 1.63(d)(1), a newly executed oath or declaration is not required in a continuation or divisional application. That is, a newly executed oath or declaration is not required, provided that: (1) the prior nonprovisional application contained an oath or declaration; (2) the continuation or divisional application was filed by all or by fewer than all of the inventors named in the prior application; (3) the specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application; and (4) a copy of the executed oath or declaration filed in the prior application, showing the signature or an indication thereon that it was signed, is submitted for the continuation or divisional application.

As such, an executed declaration was filed in the parent application, U.S. Serial No. 09/403,263; this pending application was filed by all of the inventors named in the prior application; the specification filed in this application contains no matter that would have been new matter in the prior application; and a copy of the executed oath or declaration filed in the parent application was submitted for this application. Thus, Applicants submit that a newly executed declaration is not required.

The Examiner stated that in the Application Data Sheet, the term "benoxyl" in title of the invention is misspelled (Paper No. 20060329, pages 2-3). Applicants hereby submit a corrected Application Data Sheet.

It is submitted that Applicants have overcome the objections to the specification, and Applicants respectfully request withdrawal of the objections.

Serial No. 10/749,593

Atty. Docket No. Mo 5346D2/LeA 32 314D2

Rejection Under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 4-7, 12, and 13 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention (Paper No. 20060329, pages 3-6). Applicants respectfully traverse this rejection.

The Examiner stated that the chemical formulas (II) to (VIII) are vague and indefinite because some of the substituents on the benzene ring are unrecognizable. Applicants hereby submit a new claim set.

It is thus submitted that the claims 4-7, 12, and 13 meet the requirements of 35 USC § 112, second paragraph, and reconsideration and withdrawal of the present rejection is respectfully requested.

Allowable Claims

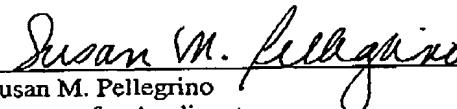
The Examiner stated that claim 3 is allowable (Paper No. 20060329, page 2).

CONCLUSION

For the foregoing reasons, Applicants submit that the claims are in condition for allowance and Applicants respectfully request reexamination of the present application, reconsideration and withdrawal of the present rejections and objections, and entry of the amendments. Should there be any further matter requiring consideration, Examiner Oh is invited to contact the undersigned counsel.

If there are any further fees due in connection with the filing of the present reply, please charge the fees to undersigned's Deposit Account No. 13-3372. If a fee is required for an extension of time not accounted for, such an extension is requested and the fee should also be charged to undersigned's deposit account.

Respectfully submitted,



Susan M. Pellegrino
Attorney for Applicants
Reg. No. 48,972

Date: October 4, 2006

Bayer Pharmaceuticals Corporation
400 Morgan Lane
West Haven, CT 06516-4175
Telephone: (203) 812-6450
Facsimile: (203) 812-6459